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GENERAL FUND SOLVENCY

I. Preliminary FY16

- The attached financial summary shows the appropriation account of the general fund required a transfer from the operating reserves of $617 million; but this transfer would've left an operating reserve balance of $-131 million. The operating reserve shortfall could be covered by a transfer from the tobacco permanent fund; however this requires legislative authorization (see NMSA 6-4-9 F). Such a transfer presumably could be accrued to FY16 but perhaps would trigger an audit finding.

II. FY17

- The financial summary shows appropriations from the appropriation account exceed projected revenue by $458 million. To cover the shortfall, the projected balance of the operating reserve would be $-591 million. Assuming authority to transfer all available general fund reserves, the operating reserve balance would be $-326 million.

- Note that 2016 legislation was vetoed that authorized a contingent 1 percent reduction in appropriations ($62 million) in the event of a revenue shortfall and a $14 million sweep of LEDA balances.

- Section 6-4-6(A), NMSA 1978 prohibits the "payment of or obligations of state government from any fund or accounts unless it may reasonably be expected that at the end of the fiscal year the balances in that fund or account will be fully restored."

- Section 8-6-7, NMSA 1978 provides a violation if the DFA Secretary issues a warrant or the State Treasurer pays a warrant when "he knows or, with the use of available accounting information, should reasonably know there is an insufficient unexpended and unencumbered balance available…"

- These statutes were enacted and amended in 1987 and 1991 following the constitutional crisis in 1986 when oil prices and state revenue collapsed (see AG Opinion No. 86-2).

III. Solvency Measures for FY17

For legal and practical reasons it is necessary to quickly take legislative action to bring General Fund balances into a surplus to cover appropriations. Practical reasons to move expeditiously are to avoid negative perceptions about the state including its bond rating and to ensure the availability of a wide range of solvency options.

- FY17 Solvency options are:
    - Sweep surplus fund balances to the general fund
    - Swap severance tax bond capital appropriation for general fund appropriations
    - Reduce appropriations
    - Increase revenues

- HB311 sponsored by Rep. Hall at the 2016 session, swept approximately $100 million to the general fund. LFC and DFA now are working on a similar proposal.

- 2017 severance tax bonding capacity is approximately $150 million. This could be enhanced approximately $28 million by a "super sweep" of surplus bonding fund revenue to be transferred to the severance tax permanent fund. LFC and DFA staff are compiling schedules of unexpended general fund appropriations that could be "swapped" to severance tax bonds and of prior year expended general fund appropriations that also could be swapped retroactively. They are also compiling a schedule of inactive severance tax bond appropriations that might be de-authorized.

- The executive directed state agencies under the control of the governor to submit plans to reduce general fund appropriations by 5 percent. LFC staff have not seen the plans but estimate that, assuming key health, public safety, and child welfare programs are exempt this would generate expenditure reductions of approximately $25-50 million. The Legislature could achieve additional expenditure reductions from public and higher education, the judicial and legislative branches and independent state agencies. Note that the FY17 general fund appropriation level is below the FY08 pre-recession level.

- General fund revenue measures would contribute perhaps half of the estimated full fiscal year impact assuming enactment at a special session with a January 1 effective date. A wide range of measures are available including closing unintended tax loopholes, reducing tax expenditures and de-earmarking revenue to other state funds.

- Targets for FY17 solvency measures should be at least $330 million to achieve a general fund surplus and $453 million to maintain the FY16 level of reserves .

General Fund Financial Summary:
August 2016 Consensus Revenue Estimate
(in millions of dollars)

August 23, 2016	Preliminary FY2016	Estimated FY2017	Estimated FY2018
APPROPRIATION ACCOUNT			
REVENUE			
Recurring Revenue			
January 2016 Revenue Forecast	$ 6,020.2	$ 6,264.6	
February 2016 Revenue Outlook	$ (125.0)	$ (125.0)	
August 2016 Revenue Forecast	$ (223.1)	$ (431.2)	$ 6,017.4
Total Recurring Revenue	$ 5,672.1	$ 5,708.4	$ 6,017.4
January 2016 Nonrecurring Revenue Update	$ 5.5	$ -	$ -
2016 Session Nonrecurring Revenue Legislation	$ 13.0	$ 62.0	$ -
Total Nonrecurring Revenue	$ 18.5	$ 62.0	$ -
TOTAL REVENUE	**$ 5,690.6**	**$ 5,770.4**	**$ 6,017.4**
APPROPRIATIONS			
Recurring Appropriations			
General Appropriation	$ 6,234.7	$ -	"New Money" in FY18 is -$210.9 -3.4%
2016 Legislation & Feed Bill	$ 6.2	$ 6,228.3	
2016 Legislation FY16 Sanding	$ (31.0)		
Total Recurring Appropriations	$ 6,209.9	$ 6,228.3	
Nonrecurring Appropriations			
Prior Year Appropriations	$ 31.0	$ -	
2016 Legislation	$ 66.7	$ 0.3	
Total Nonrecurring Appropriations	$ 97.7	$ 0.3	
TOTAL APPROPRIATIONS	**$ 6,307.6**	**$ 6,228.6**	
Transfer to (from) Reserves	$ (617.0)	$ (458.2)	
GENERAL FUND RESERVES			
Beginning Balances	$ 713.1	$ 130.4	
Transfers from (to) Appropriations Account	$ (617.0)	$ (458.2)	
Revenue and Reversions	$ 113.1	$ 57.0	
Appropriations, Expenditures and Transfers Out	$ (78.9)	$ (55.0)	
Ending Balances	**$ 130.4**	**$ (325.8)**	
Reserves as a Percent of Recurring Appropriations	*2.1%*	*-5.2%*	

Notes:

General Note: small adjustments (< ± $100,000) have been made in beginning balances of all subaccounts to conform the ending totals to the 2015 audit to the dollar. In prior years, beginning and ending balances had been rounded to the nearest $100,000.

^A balance of $101.7 million has been held in reserve for cash reconciliation purposes. The State Treasurer reported that the latest reconciliation efforts suggest nearly 100 percent of these restricted funds will be reversed and $0 will be needed for SHARE remediation.

^^$36 million of restricted General Fund reserves to address potential Special Education Funding Maintenance of Effort noted in the FY14 audit have been swept in HB311.

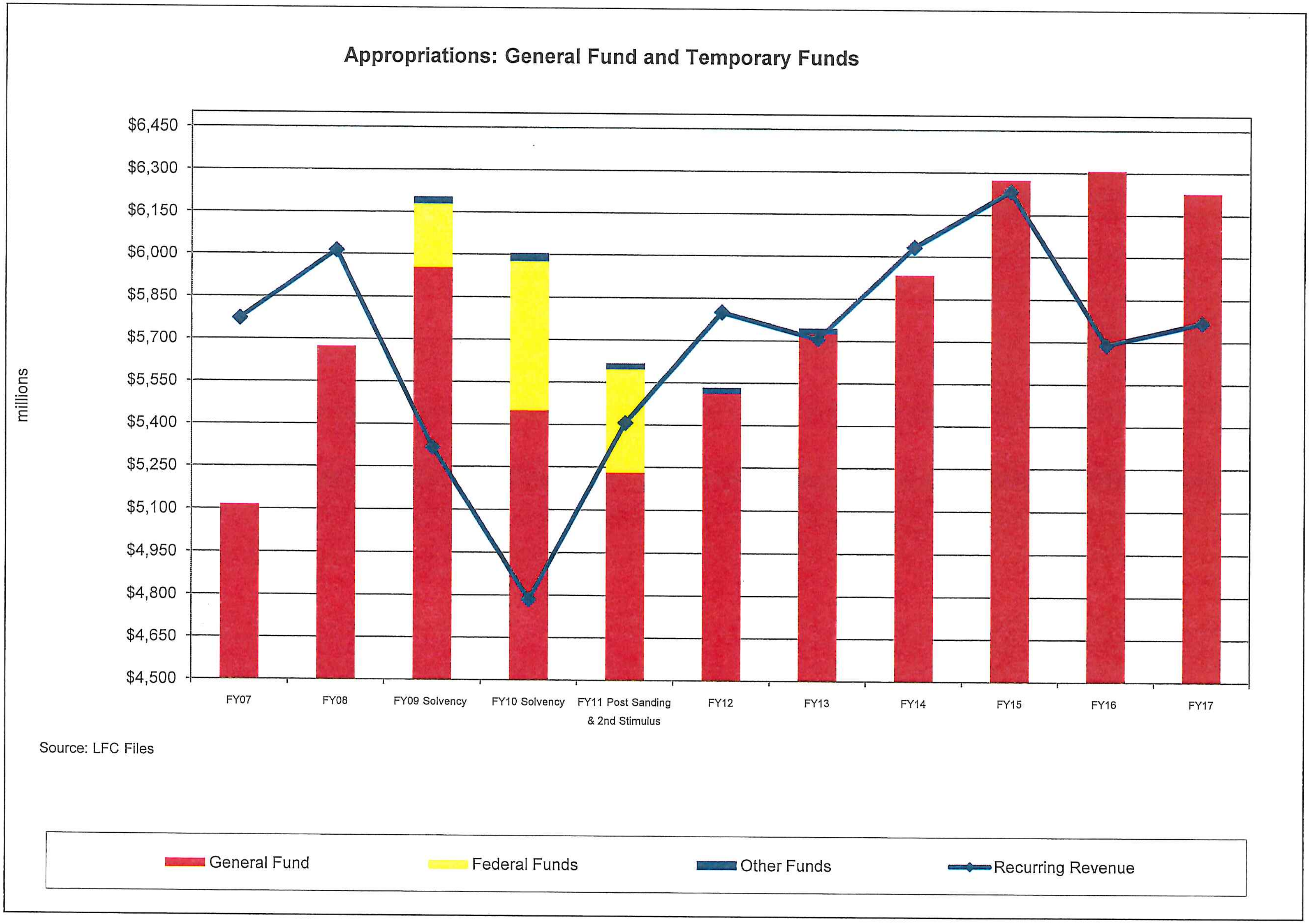
General Fund Financial Summary:
August 2016 Consensus Revenue Estimate
RESERVE DETAIL
(in millions of dollars)

	Preliminary FY2016	Estimated FY2017	Estimated FY2018
OPERATING RESERVE			
Beginning Balance	$ 319.8	$ (131.1)	$ (591.2)
BOF Emergency Appropriations/Reversions	$ (2.0)	$ (2.0)	
Transfers from/to Appropriation Account	$ (617.0)	$ (458.2)	
Transfer to ACF/Other Appropriations	$ (20.0)	$ -	
Reversal of Contingency for Unreconciled Accounts	$ -	$ -	
2016 Revenue Legislation (HB 311)*	$ 40.6	$ -	
Transfer from Tax Stabilization Reserve	$ 147.5	$ -	
Ending Balance	$ (131.1)	$ (591.2)	
APPROPRIATION CONTINGENCY FUND			
Beginning Balance	$ 28.4	$ 39.6	$ 31.6
Disaster Allotments	$ (16.3)	$ (16.0)	$ (16.0)
Other Appropriations	$ (0.5)	$ -	$ -
Transfers In	$ 20.0	$ -	
Revenue and Reversions	$ 8.0	$ 8.0	
Ending Balance	$ 39.6	$ 31.6	
Education Lock Box			
Beginning Balance	$ -	$ -	$ -
Appropriations	$ -	$ -	
Transfers In	$ -	$ -	
Ending Balance	$ -	$ -	
Total of Appropriation Contingency Fund	$ 39.6	$ 31.6	
STATE SUPPORT FUND			
Beginning Balance	$ 1.0	$ 2.4	$ 2.4
Revenues**	$ 1.4	$ -	$ -
Appropriations	$ -	$ -	
Ending Balance	$ 2.4	$ 2.4	
TOBACCO PERMANENT FUND			
Beginning Balance	$ 216.4	$ 219.4	$ 231.4
Transfers In	$ 39.6	$ 37.0	$ 37.0
Appropriation to Tobacco Settlement Program Fund	$ (18.5)	$ (18.5)	
Gains/Losses	$ 3.6	$ 12.0	$ 13.0
Additional Transfers from TSPF	$ (21.6)	$ (18.5)	
Ending Balance	$ 219.4	$ 231.4	
TAX STABILIZATION RESERVE			
Beginning Balance	$ 147.5	$ -	$ -
Transfers In	$ -	$ -	$ -
Transfer Out to Operating Reserve (Contingent on Solvency Bill)	$ (147.5)	$ -	$ -
Ending Balance	$ -	$ -	$ -
GENERAL FUND ENDING BALANCES	**$ 130.3**	**$ (325.8)**	
Percent of Recurring Appropriations	*2.1%*	*-5.2%*	

Notes:

* HB 311 - $22.2 m ($12.3m fund sweeps and $10m unrestriction of MOE).

** Pursuant to HB311 from Drivers License Fees.



Appropriations: General Fund and Temporary Funds
millions
$6,450
$6,300
$6,150
$6,000
$5,850
$5,700
$5,550
$5,400
$5,250
$5,100
$4,950
$4,800
$4,650
$4,500
FY07
FY08
FY09 Solvency
FY10 Solvency
FY11 Post Sanding & 2nd Stimulus
FY12
FY13
FY14
FY15
FY16
FY17
Source: LFC Files
General Fund
Federal Funds
Other Funds
Recurring Revenue

6-4-2. [General fund created.]

There is created a fund to be known as the "general fund" to which the state treasurer shall credit all revenues not otherwise allocated by law. Expenditures from this fund shall be made only in accordance with appropriations authorized by the legislature.

History: 1953 Comp., § 11-2-3.1, enacted by Laws 1957, ch. 7, § 1.

Cross references. — For the Short-Term Cash Management Act, *see* Chapter 6, Article 12A NMSA 1978.

For distribution of vehicle fees, *see* 66-6-23 NMSA 1978.

ANNOTATIONS

Erroneous crediting of federal money to general fund may be corrected. — The crediting of $677.35, which, by virtue of federal law, was really federal and not state money, to the general fund instead of to the vocational rehabilitation account was a clerical error which could be corrected without violation of N.M. Const., art. IV, § 30 or of this section. 1964 Op. Att'y Gen. No. 64-04.

6-4-2.1. General fund operating reserve created; authorizing expenditures.

A. There is hereby created within the general fund the "general fund operating reserve". Notwithstanding any other provision of law to the contrary, there shall be deposited to the general fund operating reserve cash balances in the fund existing pursuant to Laws 1966, Chapter 66, Section 16; Laws 1968, Chapter 71, Section 13; Laws 1970, Chapter 89, Section 4; Laws 1971, Chapter 327, Section 6; Laws 1972, Chapter 98, Section 6; Laws 1973, Chapter 403, Section 6; Laws 1974 (S.S.), Chapter 3, Section 6; Laws 1975 (S.S.), Chapter 17, Section 6; Laws 1976, Chapter 58, Section 7; Laws 1979, Chapter 404, Section 7; Laws 1981, Chapter 38, Section 7; Laws 1983, Chapter 46, Section 8; Laws 1984 (S.S.), Chapter 7, Section 7; and Laws 1986, Chapter 116, Section 1.

B. The general fund operating reserve may be expended only upon specific authorization by the legislature in an amount authorized by the legislature and only in the event general fund revenues and balances, including all other transfers to the general fund authorized by law, are insufficient to meet the level of appropriations authorized.

History: 1978 Comp., § 6-4-2.1, enacted by Laws 1987, ch. 184, § 1.

Compiler's notes. — All of the session laws referred to in the second sentence in Subsection A are uncodified provisions, relating mainly to fiscal matters.

Laws 2007, ch. 100, § 1, effective June 15, 2007, provided for the closure of the department of finance and administration revolving loan fund once all loans outstanding July 30, 2007 have been paid, prohibited loans after June 30, 2007, and reverted the fund balance to the general fund.

6-4-6. Expenditures authorized to maintain cash flow.

For cash flow purposes all amounts that have been appropriated for general government purposes may be used to pay current expenses and obligations of state government regardless of the specific fund or account to which the accounting records of the state government may show those funds or accounts allocated or appropriated. Nothing in this section authorizes:

A. the payment of expenses or obligations of state government from any fund or account unless it may reasonably be expected that at the end of the fiscal year the balances in that fund or account will be fully restored; or

B. the transfer or use of the following amounts to pay current expenses or obligations of state government unless there is a specific authorization for such a transfer or payment in a current law other than this section:

(1) revenues deposited for credit to any permanent fund;

(2) revenues deposited and pledged for the payment of principal and interest on any evidence of indebtedness of the state;

(3) federal revenues deposited for payment for a specific program; and

(4) any income from the permanent fund or from any other fund if the expenditure or transfer of that income would violate a constitutional, enabling act or trust provision.

History: Laws 1991, ch. 132, § 1.

6-4-9. Tobacco settlement permanent fund; investment; distribution.

A. The "tobacco settlement permanent fund" is created in the state treasury. The fund shall consist of money distributed to the state pursuant to the master settlement agreement entered into between tobacco product manufacturers and various states, including New Mexico, and executed November 23, 1998 or any money released to the state from a qualified escrow fund or otherwise paid to the state as authorized by Sections 6-4-12 and 6-4-13 NMSA 1978, enacted pursuant to the master settlement agreement or as otherwise authorized by law. Money in the fund shall be invested by the state investment officer in accordance with the limitations in Article 12, Section 7 of the constitution of New Mexico. Income from investment of the fund shall be credited to the fund. Money in the fund shall not be expended for any purpose, except as provided in this section.

B. In fiscal year 2007 and in each fiscal year thereafter, an annual distribution shall be made from the tobacco settlement permanent fund to the tobacco settlement program fund of an amount equal to fifty percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year until that amount is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. In the event that the actual amount distributed to the tobacco settlement program fund in a fiscal year is insufficient to meet appropriations from that fund for that fiscal year, the secretary of finance and administration shall proportionately reduce each appropriation accordingly.

C. In addition to the distribution made pursuant to Subsection B of this section, in fiscal years 2009 through 2013 and 2016, the remaining fifty percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year shall be distributed from the tobacco settlement permanent fund to the tobacco settlement program fund.

D. In addition to the distribution made pursuant to Subsections B and E of this section, in fiscal year 2014, twenty-five percent of the total amount of money distributed pursuant to the master settlement agreement to the tobacco settlement permanent fund in that fiscal year shall be distributed from the tobacco settlement permanent fund to the lottery tuition fund.

E. In addition to the distribution made pursuant to Subsections B and D of this section, in fiscal year 2014, twenty-five percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year shall be distributed from the tobacco settlement permanent fund to the tobacco settlement program fund for appropriation for direct services provided by early childhood care and education programs administered by the children, youth and families department.

F. The tobacco settlement permanent fund shall be considered a reserve fund of the state and, as a reserve fund, may be expended in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, in order to avoid an unconstitutional deficit, the legislature may authorize a transfer from the tobacco settlement permanent fund to the general fund but only in an amount necessary to meet general fund appropriations.

History: Laws 1999, ch. 207, § 1; 2000 (2nd S.S.), ch. 9, § 1; 2003, ch. 312, § 1; 2009, ch. 3, § 5; 2010, ch. 49, § 1; 2011, ch. 3, § 1; 2011, ch. 167, § 1; 2013, ch. 228, § 1; 2015, ch. 36, § 1.

The 2015 amendment, effective July 1, 2015, provided the legislature with authority to distribute fifty percent of the total amount of money distributed to the tobacco settlement permanent fund in 2016 to be distributed from the tobacco settlement permanent fund to the tobacco settlement program fund; and in Subsection C, after "2013", added "and 2016".

The 2013 amendment, effective July 1, 2013, increased distributions to the lottery tuition fund; made a distribution from the tobacco settlement permanent fund to the lottery tuition fund; made a distribution from the tobacco settlement permanent fund to the tobacco settlement program fund for appropriation for early childhood care and education programs administered by the children, youth and families department; in Subsection A, in the second sentence, after "master settlement agreement", added "or as otherwise authorized by law"; deleted former Subsection B, which made a distribution from the tobacco settlement permanent fund to the general fund; and added Subsections D and E.

The 2010 amendment, effective May 19, 2010, in Subsection D, after "fiscal year 2009", deleted "and in" and after "fiscal year 2010", added "and fiscal year 2011".

The 2009 amendment, effective February 6, 2009, added Subsection D.

The 2003 amendment, effective June 20, 2003, substituted "except as provided in this section" for "but an annual distribution shall be made to the tobacco settlement program fund in accordance with Subsection B of this section" at the end of Subsection A; deleted "On July 1 of fiscal year 2001 and on July 1 of" at the beginning of former Subsection B; added present Subsection B; added the Subsection C designation and in present Subsection C, added "In fiscal year 2007 and in" at the beginning, substituted "that" for "the immediately preceding" following "permanent fund in", added the last sentence; and added Subsection D.

The 2000 amendment, effective April 12, 2000, inserted "distribution" in the section heading; in Subsection A, inserted "any money released to the state", substituted "or otherwise paid the state as authorized by the model statute, Sections 6-4-12 and 6-4-13 NMSA 1978" for "authorized by a qualifying state statute", inserted "Income from investment of the fund shall be credited to the fund", and rewrote the last sentence; and added Subsection B.

8-6-7. Wrongful drawing or payment of warrant by secretary or treasurer; penalty.

A. If the secretary of finance and administration draws any warrant on the state treasurer when he knows or, with the use of available accounting information, should reasonably know there is an insufficient unexpended and unencumbered balance available for the purpose for which the warrant is drawn, he is in violation of this section unless the warrant will be redeemed using receivables accrued for that fiscal year pursuant to policies of the department of finance and administration.

B. If the state treasurer pays any warrant when he knows or, with the use of available accounting information, should reasonably know there are insufficient funds available in the treasury for the purpose to pay the warrant, he is in violation of this section unless the warrant will be redeemed using receivables accrued for that fiscal year pursuant to policies of the department of finance and administration.

C. A violation of this section is punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year or both.

History: 1978 Comp., § 8-6-7, enacted by Laws 1987, ch. 183, § 1; 1993, ch. 105, § 4; 2003, ch. 273, § 16.

Repeals and reenactments. — Laws 1987, ch. 183, § 1 repealed former 8-6-7 NMSA 1978, as amended by Laws 1977, ch. 247, § 15, and enacted a new section, effective June 19, 1987.

The 2003 amendment, effective July 1, 2003, in Subsection A, substituted "is" for "shall be" following "is drawn, he", inserted "unless the warrant will be redeemed using receivables accrued for that fiscal year pursuant to policies of the department of finance and administration" at the end; in Subsection B, substituted "is" for "shall be" following "the warrant, he", substituted "will be redeemed using receivables accrued for that fiscal year pursuant to policies of the department of finance and administration" for "includes federal funds that will be receipted based upon established warrant-clearing patterns" at the end; in Subsection C, substituted "is" for "shall be" following "of this section", and substituted "or both" for "by both such fine and imprisonment in the discretion of the judge" at the end.

The 1993 amendment, effective June 18, 1993, added the language beginning "unless" at the end of Subsection B.

ANNOTATIONS

Generally. — If the auditor of the territory (now secretary of finance and administration) drew any warrant on the treasurer of the territory when there was no money in the treasury in the particular fund for which such warrant was drawn, he was liable to fine of not less than $1,000 and imprisonment for not less than one year and summary removal from office by the governor. Garcia v. Territory ex rel. Bursum, 1900-NMSC-006, 10 N.M. 43, 61 P. 207.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81A C.J.S. States § 129.
